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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,836	06/23/2003	Sima Ella	26012	6456

7590 08/30/2005

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EXAMINER	
DEMILLE, DANTON D	

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,836	ELLA ET AL.	
	Examiner	Art Unit	
	Danton DeMille	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 83-129 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 83-129 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10-22-03
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 83-129 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 168-314 of copending Application No. 10/762230. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the claimed limitations are found in one combination or another in the copending application.

3. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 83-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (DE 29717774) in view of Howard.

6. Chang teaches a face and body treatment system arranged as a cabinet with a mirror in the lid. The system is designed to contain many different types of face and body treatment devices. Chang teaches a plurality of devices including a device for applying heat, a humidifier, a massage device and a vacuum cleaning device. A control console is also taught. The device is intended to be used in beauty salons and skin clinics. The device is capable of providing any conventional device used in the face and body treatment industry. There is no unobviousness of using any conventional face and body treatment device in the laptop.

7. It is not clear if the controller is a computerized device however, such would have been an obvious provision. Howard teaches a vacuum face and body treatment system that includes a computerized device for storing and performing programmed treatment modes of operation. It would have been obvious to one of ordinary skill in the art to modify Chang to use a computerized controller as taught by Howard to control all of the different types of treatment device.

8. Claims 90-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 83 above, and further in view of Torii.

9. Torii teaches the convention of having plural treatment devices within the same device. The vacuum device can include heat application or electrical application as shown in figures 12 and 13. It would have been obvious to one of ordinary skill in the art to further modify Chang to use a vacuum device that further includes heat or electric application as taught by Torii to enhance the treatment.

10. Claims 98, 100, 101 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jacobs.

11. Jacobs teaches a spout 21 and ultrasound transducer 36a and 36b.

12. Claim 99 rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs in view of Howard '318.

13. It would have been obvious to one of ordinary skill in the art to modify Jacobs to use a computer to control the automatic application of the suction as taught by Howard so that controlled application of the ultrasonic therapy can be applied.

14. Claim 102 rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs in view of Torii.

15. Torii teaches additional modes of treatment as noted above. It would have been obvious to one of ordinary skill in the art to further modify Jacobs to use a vacuum device that further includes heat or electric application as taught by Torii to enhance the treatment.

16. Claims 103, 104, 106 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klopotek.

17. Klopotek teaches in figure 9, an embodiment that includes a spout that "not only a suction function but also a magnet 86 which can be either a permanent or oscillating electromagnet which further assists in the removal of the magnetically susceptible particles by magnetic attraction" column 11, lines 8-16.

18. Regarding claim 106 since Klopotek teaches both permanent and oscillating magnetic elements, this would appear to comprehend the claimed additional mode of treatment.

19. Claim 105 rejected under 35 U.S.C. 103(a) as being unpatentable over Klopotek in view of Jacobs.

20. It would have been obvious to one of ordinary skill in the art to modify Klopotek to include rollers on the spout as taught by Jacobs to ease the motion of the device over the skin of the patient.

21. Claim 107 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shadduck.

22. Shadduck teaches a vacuum pump 80, a compressor 30, a sandblasting peeling device 40, a blow channel 8B, a suction channel 58 and at least one electronically controlled treatment device 5.

23. Claim 108 rejected under 35 U.S.C. 103(a) as being unpatentable over Shadduck in view of Marasco.

24. As noted above, Shadduck teaches the sandblasting peeling device. Marasco teaches an assemble of different treatment devices including means to remove and clean dermal layers. One of the treatment devices includes applying oxygen. It would have been obvious to one of ordinary skill in the art to modify Shadduck to use it in combination with other similar treatment devices such as taught by Marasco to provide a complete treatment assembly.

25. Claims 109-129 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moreland.

26. Moreland teaches a device for applying oxygen to be absorbed by tissue comprising liquefied oxygen gas mixture. Canister 61 can be a liquid mixture of helium and oxygen, column 4 lines 1-8. Moreland also teaches a control panel 92 where the diver can observe and/or adjust

the pressure and gas mixture. This would comprehend the regulating valve to control the outflow of oxygen.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

22 August 2005

Danton DeMille
Primary Examiner
Art Unit 3764